

PERIAN SMITH, CONSERVATOR FOR ANDRIA DIAN SMITH, MINOR
v.
ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-47-A

Decided October 26, 1989

Appeal from a decision of the Acting Billings Area Director, Bureau of Indian Affairs, disapproving an application for sale of a minor's trust land.

Affirmed.

1. Indians: Lands: Allotments: Alienation--Indians: Trust Responsibility

In determining whether to approve the sale of a minor Indian's trust land to another Indian, the Bureau of Indian Affairs' trust duty is solely to the minor for whom the land is held in trust.

APPEARANCES: Harold G. Stanton, Esq., Hardin, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Perian Smith, Conservator for Andria Dian Smith, her minor daughter, challenges a March 23, 1989, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving an application for the sale of Andria's trust land to her grandmother, Claire Pendergrass Smith. For the reasons discussed below, the Board affirms that decision.

Background

Andria Dian Smith, unallotted Blackfeet No. 201 N-18370, was born on January 10, 1979. A BIA report listing her trust land interests as of October 18, 1988, shows that she owns whole or fractional interests in several allotments, with an acreage totalling 7469.19 acres. ^{1/} She holds

^{1/} All or part of her interests were inherited from her father, Raleigh Robert Smith. See Indian Probate IP BI 275A 84-2, Petition for rehearing denied, Aug. 2, 1988.

the entire interest in 16 allotments, covering 960 acres. She holds fractional interests, of either 1/4 or 1/3, in five additional allotments, covering the remaining acreage. The BIA report estimates that her total interest is equivalent to approximately 2847.37 acres.

On September 27, 1988, appellant submitted to the Blackfeet Agency, BIA (agency), an application for the sale of Andria's trust land to Claire Smith at the appraised fair market value, as determined by BIA. A statement submitted in support of the application, dated October 2, 1988, and signed by appellant and Claire Smith, stated that Claire Smith and her husband Robert have a ranching and farming operation and that Andria owns a 1/4 interest in the land included in the ranch. The statement declared:

The existing divided ownership, in which 3/4ths of the ranch is owned by Mrs. Smith and 1/4th is owned by Andria presents real problems. Robert Smith and Mrs. Smith cannot effectively finance the operations of the ranch without the ownership of a full interest in the ranch, which is a threat to the family operation and could well affect the value of Andria's interest.

* * * * *

From Andria's standpoint, it is very possible that she would benefit financially by having cash flow produced by the interest income on cash investments rather than by relying on the income from real estate. The return from cash rental received from land rent is less than the interest that could be earned from the sale price of the land. Ranch real estate does well to produce a two percent return on capital, while it is not unreasonable to expect at least an eight percent interest return on the invested funds. It is difficult to speculate as to what the value of real estate will be when Andria reaches her majority but funds invested in insured deposits will have a secure and definite value.

(Oct. 2, 1988, Statement at 2).

On October 12, 1988, the Superintendent denied the application on the grounds that the sale would not be in Andria's best interest. He stated:

It would not be in her best interest for us to speculate as to what this land might be worth in nine years, or anytime thereafter, should she want to retain her status as a land owner.

We feel that since there are only nine years remaining before Andrea [sic] will have the privilege of making this decision for herself she should be allowed this opportunity.

Appellant appealed to the Area Director who, by decision dated March 23, 1989, affirmed the Superintendent's decision. The Area Director noted, inter alia, that Andria had a substantial sum in her Individual Indian Money (IIM) account at the agency, that the agency had allocated an amount per month to be paid to appellant for Andria's support, and that

there was no need to sell Andria's land to provide funds for her. He also noted that approval of the sale was apparently being sought to benefit Andria's grandparents rather than Andria, and that it was the Superintendent's duty to consider only Andria's interest, not the interest of her grandparents.

Although the Area Director's decision was issued after revised appeal regulations for BIA and the Board became effective, 2/ appellant was evidently unaware of the revision and filed her appeal with the Assistant Secretary - Indian Affairs. The appeal was transmitted to the Board on May 16, 1989, for consideration under the new procedures. It was docketed on June 13, 1989, following receipt of the administrative record. Only appellant filed a brief.

Discussion and Conclusions

On appeal to the Board, appellant continues to argue that Andria would receive a better return on an investment of cash than she would receive from her land. She also argues that, in determining whether to approve the sale of Andria's land, the Area Director should have considered the interests of both Andria and her grandmother. Further, she contends that the monthly amount allocated for Andria's support from her IIM funds is insufficient for an adequate standard of living.

Before addressing the merits of this appeal, the Board is compelled to note an apparent conflict of interest on the part of the attorney representing appellant. The attorney represented Claire Smith and her husband during the probate of the estate of their son, Raleigh Robert Smith. Appellant was represented by another attorney. It is clear from the probate documents included in the record of this case that the interests of these parties were adverse. The documents filed in this appeal indicate that the attorney is attempting to represent the interests of Claire Smith as well as those of Andria. Whether or not the family is on good terms, as appellant states, the legal interests of Andria and her grandmother in this matter remain in conflict, and the attorney should not be representing both. 3/

None of appellant's arguments on the merits are persuasive. Appellant believes that Andria would receive more income if her trust land were converted to cash and invested. However, it is apparent that Andria is not in immediate need of more income. 4/ BIA properly took into account Andria's long-term interest and concluded that, in the absence of any immediate need for funds, Andria's land should be preserved for her so that she will have the opportunity to decide for herself, upon reaching her majority, whether to sell the land or retain it.

2/ See 54 FR 6478 and 6483 (Feb. 10, 1989).

3/ See Model Rules of Professional Conduct Rule 1.7 (1983).

4/ A statement of Andria's IIM account dated Dec. 28, 1988, shows a balance of \$122,883.20.

[1] BIA also properly concluded that its responsibility in this matter was to protect the interests of Andria, not the interests of Andria's grandmother. While BIA also serves as trustee for Claire Smith's trust property, the property at issue here is held in trust for Andria, and therefore BIA's trust duty in this case is solely to her. Further, because Andria is a minor, BIA has an even greater duty toward her than it would have were she an adult.

Appellant also contends that Andria's monthly allowance from her IIM account is inadequate. No decision concerning Andria's allowance is at issue in this appeal. If the allowance is inadequate, appellant's remedy is to seek to have it increased. 5/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 23, 1989, decision of the Acting Billings Area Director is affirmed.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

5/ Appellant sought an increase in September 1987, while the estate of Raleigh Robert Smith was still pending. The request was apparently denied by the Administrative Law Judge. In recommending denial on the grounds that the existing allowance was adequate, the Superintendent noted: "We also do not deem it proper nor customary for a child to be expected to provide half the support for its parent, which appears to be the case here, rather than the customary role of parent providing for child."